

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of EVELINE
BARROS-CEPEDA,
Plaintiffs

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

**DEFENDANTS CITY OF BOSTON'S AND THOMAS TAYLOR'S STATUS REPORT
REGARDING DEFENDANTS' EMERGENCY MOTION FOR CONTEMPT AGAINST
NONPARTY WITNESSES FOR FAILURE TO OBEY DEPOSITION SUBPOENAS AND
THIS COURT'S ORDER COMPELLING THEIR DEPOSITION ATTENDANCE**
pursuant to fed. R. civ. P. 45(f)

Defendants, City of Boston and Thomas Taylor, Jr. ("Defendants"), hereby submit this status report regarding their previously filed Motion for Contempt, filed January 31, 2008 and scheduled for hearing on Monday, February 25, 2008 at 3 p.m.

In their original motion, the Defendants sought a contempt action against two nonparty witnesses, Maria DaRosa and Carlos Fernandes, who failed to appear at their scheduled depositions despite service of their deposition subpoenas and this Court's December 27, 2007 Order compelling their deposition attendance. The Defendants now seek to modify their contempt action and withdraw their motion with respect to Carlos Fernandes only. Nonparty witness Carlos Fernandes did comply in part with his most recent deposition subpoena and provided testimony yesterday, on February 21, 2008.¹ The other nonparty witness, Maria

¹ While Mr. Fernandes did answer some questions during his February 21, 2008 deposition, he asserted his Fifth Amendment privilege to the remainder of the questions. Moreover, Mr. Fernandes asserted his Fifth Amendment

DeRosa, however, did not comply with her deposition subpoena and accordingly, the Defendants' motion for contempt against her remains viable.

In anticipation of the February 25, 2008 hearing, Defendants also submit for the Court's review certain additional relevant materials. First, the Defendants submit the transcript of Ms. De Rosa's attempted deposition on December 17, 2007 when her counsel, Eduardo Masferrer, appeared, but Ms. DeRosa did not appear. See Exhibit A. At that time, Attorney Masferrer acknowledged that Ms. De Rosa, a former plaintiff in this action, was aware of her deposition and had recently met with Mr. Masferrer in preparation for her testimony. See Exhibit B, Correspondence to Attorney Masferrer from Attorney Litsas, dated December 18, 2008. Additionally, Attorney Masferrer also advised that Ms. DeRosa would be asserting her Fifth Amendment privilege during her deposition. See Exhibit B.

More recently, on February 12, 2008, Attorney Masferrer was advised by both regular mail and facsimile of Ms. DeRosa's deposition scheduled for February 21, 2008 and the contempt hearing scheduled for February 25, 2008. See Exhibit C, Correspondence to Attorney Masferrer from Attorney Litsas, dated February 12, 2008. Ms. DeRosa was also provided with a copy of her deposition subpoena along with all other required documents on February 18, 2008 at her residence. See Document 83. Ms. DeRosa, however, did not appear for her February 21, 2008 deposition. Additionally, it should also be noted that Ms. DeRosa has recently discontinued the services of Attorney Masferrer. See Exhibit D.

Despite numerous subsequent attempts to conduct Ms. DeRosa's deposition from

despite previously providing a statement to the Boston Police on October 2, 2002 about the events of September 8, 2002. On this basis, the Defendants contend that Mr. Fernandes has waived his Fifth Amendment privilege and accordingly, the Defendants will be filing a Motion to Compel under separate cover. See Rogers v. United States, 340 U.S. 367, 373 (1951). ("[In instances when] criminalizing facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details.").

December 17, 2008 through February 21, 2008, Ms. DeRosa has failed to appear for her deposition. As for her January 16, 2008 deposition, it should be noted that John Gamel served Ms. DeRosa's deposition subpoena and Order at her 12 Greenheys Street, Dorchester, MA. residence on January 7, 2008. See Exhibit E. This subpoena, along with this Court's December 27, 2007 Order compelling Ms. DeRosa's deposition attendance, was hand-delivered to Ms. DeRosa's partner, Courtney Ford, at Ms. DeRosa's residence. See id. Courtney Ford confirmed that Ms. DeRosa resided at that address, stated that he would accept service on her behalf and indicated that he would provide her with the served documents. See id.

It is undisputed that Ms. DeRosa, a former plaintiff in this action, has been aware of her numerous deposition subpoenas, has consistently evaded her scheduled depositions and disobeyed this Court's December 27, 2007 Order compelling her deposition attendance on January 16, 2008. Accordingly, the Defendants request that she be held in contempt until she complies with her deposition subpoena.

Respectfully submitted,

DEFENDANTS, THOMAS TAYLOR, JR.
AND CITY OF BOSTON,

By their attorneys:

/s/ Helen G. Litsas

Helen G. Litsas #644848
Special Assistant Corporation Counsel
Hollett Building
38 Main Street
Saugus, MA 01906
(781) 231-8090

Evan C. Ouellette, BBO # 655934
Assistant Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201
(617)635-4048

CERTIFICATE OF SERVICE

I, Helen G. Litsas, hereby certify that on this date I served a copy of the foregoing documents upon lead plaintiff's counsel, Andrew Stockwell-Alpert, by electronic filing, email, facsimile and by postage prepaid, first class, U.S. Mail.

2/22/08 /s/ Helen G. Litsas

Date Helen G. Litsas

1 VOLUME: I
2 PAGES: 1 to 5
2 EXHIBITS: None

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4 UNITED STATES DISTRICT COURT
4 DISTRICT OF MASSACHUSETTS
5 CIVIL ACTION NO. 05-11803-MLW
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7 SHE NIA DANCY-STEWART, as)
8 Administratrix of the)
8 Estate of Eveline)
9 Barros-Cepeda,)
9 Plaintiff,)
10 v.)
10)
11 THE CITY OF BOSTON and)
11 THOMAS TAYLOR, JUNIOR,)
12 Defendants.)
13

14 SCHEDULED DEPOSITION of MARIADeROSA, a
15 witness called on behalf of the Defendant, The
16 City of Boston, pursuant to the applicable
17 provisions of the Massachusetts Rules of Civil
18 Procedure, before Myriam A. Maracas, Registered
19 Professional Reporter and Notary Public in and
20 for the Commonwealth of Massachusetts, at the
21 City of Boston Law Department, City Hall Plaza,
22 Boston, Massachusetts, on Monday, December 17,
23 2007, commencing at 2:45 p.m.

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G&M COURT REPORTERS & ASSOCIATES
(617) 338-0030

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2 APPEARANCES:

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4 ANDREW STOCKWELL-ALPERT, ESQUIRE
11 Beacon Street, Suite 1210,
5 Boston, MA 02108,
(617) 720-4244
6 Attorney for the Plaintiff.

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8 LAW OFFICE OF HELEN G. LITSAS
Hollett Building
9 38 Main Street, Saugus, MA 01906
BY: Helen G. Litsas, Esquire
10 Attorney for the Defendant,
The City of Boston.

11

12 CITY OF BOSTON LAW DEPARTMENT
City Hall Plaza, Room 615,
13 Boston, MA 02201
BY: Evan Ouellette, Esquire,
14 Co-counsel for the Defendant,
The City of Boston.

15

16 MASFERRER & ASSOCIATES, PC
6 Beacon Street, Suite 720,
17 Boston, MA 02108
BY: Eduardo A. Masterrer, Esquire
(617) 531-0135
(617) 531-0136
19 Attorney for Maria DeRosa.

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G&M COURT REPORTERS & ASSOCIATES
(617) 338-0030

1 I N D E X

2

3 Scheduled Testimony of

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5 Maria DeRosa

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9 E X H I B I T S

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11

12 No. Description Page

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15 (None)

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(617) 338-0030

1 PROCEEDINGS

2 MS. LITSAS: Good afternoon. Today it
3 is December 17th. It's approximately 2:45.
4 We're here for Maria DeRosa's scheduled
5 deposition, which was to begin at 2:00 p.m.
6 Ms. DeRosa is not here, despite an effective
7 service of her subpoena. Mr. Masferrer is here.
8 However, he represents Ms. DeRosa, and he has
9 informed me that he has been unable to contact
10 Ms. DeRosa or unable to reach her by telephone.
11 Is there anything you would like to add?

12 MR. OUELLETTE: No, not at this time.
13 Once we get in contact with Ms. DeRosa, we'll
14 reach out to the City to reschedule the
15 deposition again, unfortunately.

16 MS. LITSAS: Anything else, Evan?

17 MR. OUELLETTE: No.

18 MS. LITSAS: That's it for the record.
19 (Whereupon, the scheduled deposition
20 was adjourned at 2:46 p.m.)

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G&M COURT REPORTERS & ASSOCIATES
(617) 338-0030

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2 CERTIFICATE

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4 I, Myriam A. Maracas, Registered
5 Professional Reporter, do hereby certify that
6 the foregoing transcript is a true and accurate
7 transcription of my stenographic notes taken on
8 December 17, 2007.

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11 Myriam A. Maracas
12 Registered Professional
13 Reporter

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G&M COURT REPORTERS & ASSOCIATES
(617) 338-0030

LAW OFFICE OF HELEN G. LITSAS

HELEN G. LITSAS, ESQ.
helen@litsaslaw.com

ATTORNEY AT LAW
38 MAIN STREET
SAUGUS, MA 01906
Tel. (781) 231-8090 ~ Fax (781) 231-8094
www.litsaslaw.com

JENNIFER L. MANNING-ZOLL
OF COUNSEL

December 18, 2007

Eduardo Masferrer, Esq.
Masferrer & Associates, PC
6 Beacon Street
Boston, MA 02108

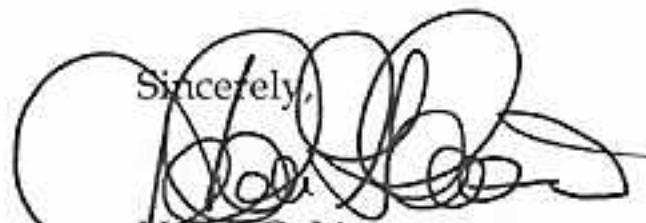
Re: Shenia Dancy-Stewart et al., v. City of Boston et al.
05-11803-MLW

Dear Mr. Masferrer:

As you are aware, your client, Maria DaRosa, failed to appear at her deposition scheduled for December 17, 2007 at 2:00 p.m. at City Hall, Rm. 615, Boston, MA. At that time, you advised me that you had previously contacted your client and advised her of her deposition scheduled for that day. You had also advised me that your client had recently met with you in your office in preparation of her upcoming deposition. You also advised me that Ms. DaRosa would assert her Fifth Amendment privilege on certain deposition questions.

Yesterday, I advised you that given Ms. DaRosa's consistent failure to appear at her deposition, a motion to compel her attendance may be necessary. If, however, you contact me within the next few days to reschedule her deposition, I will postpone seeking court intervention.

Should you have any questions, please do not hesitate to contact me. Thank you for your time and attention to this matter.


Sincerely,
Helen G. Litsas
(781) 231-8090

HGL/jml
Enclosures
cc: Evan Ouellette, Esq.

LAW OFFICE OF HELEN G. LITSAS

HELEN G. LITSAS, Esq.
helen@litsaslaw.com

ATTORNEY AT LAW
38 MAIN STREET
SAUGUS, MA 01906
Tel. (781) 231-8090 ~ Fax (781) 231-8094
www.litsaslaw.com

JENNIFER L. MANNING-ZOLL
OF COUNSEL

February 12, 2008

BY FACSIMILE AND REGULAR MAIL

Eduardo Masferrer, Esq.
Masferrer & Associates, PC
6 Beacon Street
Boston, MA 02108

Re: Shenia Dancy-Stewart et al., v. City of Boston et al.
05-11803-MLW

Dear Mr. Masferrer:

Enclosed please find a deposition subpoena for your client requiring her attendance at a deposition scheduled for 2 p.m. on Thursday, February 21, 2008. Please note that because of Ms. DaRosa's failure to comply with the deposition subpoenas and the Court's Order on the Defendants' Motion to Compel, I have filed a Motion for Contempt that will be heard on February 25, 2008 at 3 p.m. before the Honorable Mark Wolf of the United States District Court. Enclosed please find copies of all relevant subpoenas and Orders from Judge Wolf.

Should you have any questions, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,



Helen G. Litsas
(781) 231-8090

HGL/jml
Enclosures
cc: Evan Ouellette, Esq.

MASFERRER & ASSOCIATES, P.C.
ATTORNEYS AT LAW
6 BEACON STREET, SUITE 720 BOSTON, MA 02108
(617) 531-0135 (617) 531-0136 (f)

February 14th, 2008

Law Office of Helen G. Litsas
Attorney at Law
30 main Street
Saugus, MA 01906

Re: Shenia Dancy Stewart et al., v. City of Boston et al.

Dear Attorney Litsas,

I am writing to inform you that Ms. Maria Da Rosa has contacted Attorney Masferrer stating that she no longer requires his legal services. As such, our office no longer represents her in the above-entitled matter.

Should you have any further questions, please do not hesitate to contact our office at (617) 531-0135.

Sincerely,

Meghan R. Dalton

Meghan R. Dalton
Assistant to Attorney Masferrer

CC: Via Facsimile
(781) 231-8094

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
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Defendants

AFFIDAVIT OF JOHN GAMEL

I, JOHN GAMEL, on oath, do hereby depose the following:

1. I am currently employed as a private investigator and was assigned by the City of Boston to serve Ms. DeRosa with certain documents related to the above-captioned matter.
2. On January 7, 2008, I arrived at the residence of Maria DeRosa, 12 Greenheys Street, Dorchester, MA, to serve her with a deposition subpoena, along with an Order from the Honorable Mark Wolf, compelling Ms. DeRosa's attendance at a deposition scheduled for January 16, 2008.
3. At that time, Courtney Forde met me at the door of Ms. DeRosa's residence, and informed me that Ms. DeRosa was working, but that he would accept service on her behalf and would provide the subpoena to her upon her return to her residence.
4. Mr. Forde described his relationship to Ms. DeRosa as "her partner."

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 22nd
OF FEBRUARY,

/s/ John Gamel

/s/ John Gamel